

AMENDED IN SENATE JUNE 18, 2002
AMENDED IN SENATE JUNE 3, 2002
AMENDED IN SENATE MAY 15, 2002
AMENDED IN SENATE APRIL 24, 2002
AMENDED IN SENATE SEPTEMBER 14, 2001
AMENDED IN SENATE JULY 18, 2001
AMENDED IN SENATE JULY 9, 2001
AMENDED IN ASSEMBLY APRIL 26, 2001
AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 57

Introduced by Assembly Member Wright
(Coauthor: Senator Alarcon)

December 4, 2000

An act to add Section 454.5 to the Public Utilities Code, relating to public utilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Wright. Electrical corporations: procurement plans.

(1) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity.

This bill would state findings and declarations regarding providing guidance to electrical corporations and the commission for the procurement of electricity and electricity demand reductions by an electrical corporation and providing for review by the commission of procurement plans of electrical corporations.

~~This~~

The bill would amend the act to require the commission to review and adopt a procurement plan for each electrical corporation in accordance with elements, incentive mechanisms, and objectives set forth in the bill.

The bill would authorize the commission to engage ~~a highly capable~~ *an* independent consultant or advisory service to evaluate risk management and strategy. The bill would require the commission to adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, and to determine the impact of a proposed divestiture on an electrical ~~corporations~~ *corporation's* procurement plan.

The bill would allow an electrical corporation that serves less than 500,000 retail customers within the state to file with the commission a request for exemption from the provisions of the bill. The bill would require the commission to grant the exemption upon a showing of good cause.

(2) Existing law makes a violation of the provisions of the ~~Public Utilities Act~~ *act* a crime.

This bill, by imposing new requirements on electrical corporations, would expand the scope of that crime, and thus impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) The bill would appropriate \$600,000 from the Public Utilities Commission Utility Reimbursement Account to the commission for the purposes of implementing this bill.



(5) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to do all of the
2 following:

3 (a) Provide guidance to electrical corporations and the Public
4 Utilities Commission for the prospective procurement of
5 electricity and electricity demand reductions by an electrical
6 corporation.

7 (b) Ensure, by no later than January 1, 2003, that each electrical
8 corporation whose customers are currently being served by the
9 Department of Water Resources will resume procurement for
10 those needs that are not being met by the Department of Water
11 Resources.

12 (c) Direct the Public Utilities Commission, consistent with
13 subdivisions (a) and (b) of Section 701.1 of the Public Utilities
14 Code, to review each electrical corporation's procurement plan in
15 a manner that assures creation of a diversified procurement
16 portfolio, assures just and reasonable electricity rates, provides
17 certainty to the electrical corporation in order to enhance its
18 financial stability and creditworthiness, and eliminates the need,
19 with certain exceptions, for after-the-fact reasonableness reviews
20 of an electrical corporation's prospective electricity procurement
21 performed consistent with an approved procurement plan.

22 (d) *Direct the Public Utilities Commission to assure that each*
23 *electrical corporation optimizes the value of its overall supply*
24 *portfolio, including Department of Water Resources contracts and*
25 *procurement pursuant to Section 454.5 of the Public Utilities*
26 *Code, for the benefit of its bundled service customers.*

27 SEC. 2. Section 454.5 is added to the Public Utilities Code, to
28 read:

29 454.5. (a) The commission shall specify the allocation of
30 electricity, including quantity, characteristics, and duration of
31 electricity delivery, that the Department of Water Resources shall
32 provide under its power purchase agreements to the customers of
33 each electrical corporation, which shall be reflected in the



1 electrical corporation's proposed procurement plan. Each
2 electrical corporation shall file a proposed procurement plan with
3 the commission not later than 60 days after the commission
4 specifies the allocation of electricity. The proposed procurement
5 plan shall ~~indicate~~ *specify* the date that the electrical corporation
6 intends to resume procurement of electricity for its retail
7 customers, consistent with its obligation to serve. ~~The commission~~
8 ~~shall review and adopt a procurement plan, as set forth in this~~
9 ~~section, not later than 90 days prior to the date that the electrical~~
10 ~~corporation intends to resume procurement, as specified in the~~
11 ~~procurement plan. After the commission's adoption of a~~
12 ~~procurement plan, the commission shall allow not less than 90~~
13 ~~days before the electrical corporation resumes procurement~~
14 ~~pursuant to this section.~~

15 (b) An electrical corporation's proposed procurement plan
16 shall include, but not be limited to, all of the following:

17 (1) An assessment of the price risk associated with the
18 electrical corporation's portfolio, including any utility-retained
19 generation, existing power purchase and exchange contracts, and
20 proposed contracts or purchases under which an electrical
21 corporation will procure electricity, electricity demand reductions,
22 and electricity-related products and the remaining open position to
23 be served ~~via~~ *by* spot market transactions.

24 (2) A definition of each electricity product, electricity-related
25 product, and procurement related financial product, including
26 support and justification for the product type and amount to be
27 procured under the plan.

28 (3) The duration of the plan.

29 (4) The duration, timing, and range of quantities of each
30 product to be procured.

31 (5) A competitive procurement process under which the
32 electrical corporation may request bids for procurement-related
33 services, including the format and criteria of that procurement
34 process.

35 (6) An incentive mechanism, if any incentive mechanism is
36 proposed, including the type of transactions to be covered by that
37 mechanism, their respective procurement benchmarks, and other
38 parameters needed to determine the sharing of risks and benefits.

39 (7) The upfront standards and criteria by which the
40 acceptability and eligibility for rate recovery of a proposed

1 procurement transaction will be known by the electrical
2 corporation prior to execution of the transaction. This shall include
3 an expedited approval process for the commission's review of
4 proposed contracts and subsequent approval or rejection thereof.
5 The electrical corporation shall propose alternative procurement
6 choices in the event a contract is rejected.

7 (8) Procedures for updating the procurement plan.

8 (9) A showing that the procurement plan will *achieve the*
9 *following*:

10 (A) *The electrical corporation will, in order to fulfill its unmet*
11 *resource needs and in furtherance of Section 701.3, until a 20*
12 *percent renewable resources portfolio is achieved, procure*
13 *renewable energy resources with the goal of ensuring that at least*
14 *1 percent per year the electricity procured by the electrical*
15 *corporation is generated from renewable energy resources,*
16 *provided sufficient funds are made available pursuant to Section*
17 *399.6, to cover the above-market costs for new renewable energy*
18 *resources.*

19 (B) *The electrical corporation will create or maintain a*
20 *diversified procurement portfolio consisting of both short-term*
21 *and long-term electricity and electricity-related and demand*
22 *reductions products.*

23 (10) The electrical corporation's risk management policy,
24 strategy, and practices, including specific measures of price
25 stability.

26 (11) A plan to achieve appropriate increases in diversity of
27 ownership and diversity of fuel supply of nonutility electrical
28 generation.

29 (12) A mechanism for recovery of reasonable administrative
30 costs related to procurement in the generation component of rates.

31 (c) The commission shall review and accept, modify, or reject
32 each electrical corporation's procurement plan. The commission's
33 review shall consider each electrical corporation's individual
34 procurement situation, and shall give strong consideration to that
35 situation in determining which one or more of the features set forth
36 in this subdivision shall apply to that electrical corporation. A
37 procurement plan approved by the commission shall contain one
38 or more of the following features, provided that the commission
39 may not approve a feature or mechanism for an electrical
40 corporation if it finds that the feature or mechanism would impair

1 the restoration of an electrical corporation's creditworthiness or
2 would lead to a deterioration of an electrical corporation's
3 creditworthiness:

4 (1) A competitive procurement process under which the
5 electrical corporation may request bids for procurement-related
6 services. The commission shall specify the format of that
7 procurement process, as well as criteria to ensure that the auction
8 process is open and adequately subscribed. Any purchases made
9 in compliance with the commission-authorized process shall be
10 recovered in the generation component of rates.

11 (2) An incentive mechanism that establishes a procurement
12 benchmark or benchmarks and authorizes the electrical
13 corporation to procure from the market, subject to comparing the
14 electrical corporation's performance to the
15 commission-authorized benchmark or benchmarks. The incentive
16 mechanism shall be clear, achievable, and contain quantifiable
17 objectives and standards. The incentive mechanism shall contain
18 balanced risk and reward incentives that limit the risk and reward
19 of an electrical corporation.

20 (3) Upfront achievable standards and criteria by which the
21 acceptability and eligibility for rate recovery of a proposed
22 procurement transaction will be known by the electrical
23 corporation prior to the execution of the bilateral contract for the
24 transaction. The commission shall provide for expedited review
25 and either approve or reject the individual contracts submitted by
26 the electrical corporation to ensure compliance with its
27 procurement plan. To the extent the commission rejects a proposed
28 contract pursuant to this criteria, the commission shall designate
29 alternative procurement choices obtained in the procurement plan
30 that will be recoverable for ratemaking purposes.

31 (d) A procurement plan approved by the commission shall
32 accomplish each of the following objectives:

33 (1) Enable the electrical corporation to fulfill its obligation to
34 serve its customers at just and reasonable rates.

35 (2) Eliminate the need for after-the-fact reasonableness
36 reviews of an electrical corporation's actions in compliance with
37 an approved procurement plan, including resulting electricity
38 procurement contracts, practices, and related expenses. However,
39 the commission may establish a regulatory process to verify and
40 assure that each contract was administered in accordance with the

1 terms of the contract, and contract disputes which may arise are
2 reasonably resolved.

3 (3) Ensure timely recovery of prospective procurement costs
4 incurred pursuant to an approved procurement plan. The
5 commission shall establish rates based on forecasts of
6 procurement costs adopted by the commission, actual
7 procurement costs incurred, or combination thereof, as
8 determined by the commission. The commission shall establish
9 power procurement balancing accounts to track the differences
10 between recorded revenues and costs incurred pursuant to an
11 approved procurement plan. The commission shall review the
12 power procurement balancing accounts, not less than
13 semiannually, and shall adjust rates or order refunds, as necessary,
14 to promptly amortize a balancing account-, *according to a*
15 *schedule determined by the commission* Until January 1, 2006, ~~this~~
16 ~~adjustment shall occur no later than when the power procurement~~
17 ~~balancing account adjustment is overcollected or undercollected~~
18 ~~in an amount that exceeds 5 percent of the electrical the~~
19 *commission shall ensure that any overcollection or*
20 *undercollection in the power procurement balancing account does*
21 *not exceed 5 percent of the electrical* corporation's actual recorded
22 generation revenues for the prior calendar year excluding revenues
23 collected for the Department of Water Resources. The commission
24 shall determine the schedule for amortizing the overcollection or
25 undercollection in the balancing account to ensure that the 5
26 percent threshold is not exceeded. After January 1, 2006, this
27 adjustment shall occur when deemed appropriate by the
28 commission consistent with the objectives of this section.

29 (4) Moderate the price risk associated with serving its retail
30 customers, including the price risk embedded in its long-term
31 supply contracts, by authorizing an electrical corporation to enter
32 into financial and other electricity-related product contracts.

33 (5) Provide for just and reasonable rates, with an appropriate
34 balancing of price stability and price level in the electrical
35 corporation's procurement plan.

36 (e) The commission shall provide for the periodic review and
37 prospective modification of an electrical corporation's
38 procurement plan.

39 (f) The commission may engage ~~a highly capable~~ *an*
40 independent consultant or advisory service to evaluate risk

1 management and strategy. The reasonable costs of any consultant
2 or advisory service is a reimbursable expense and eligible for
3 funding pursuant to Section 631.

4 (g) The commission shall adopt appropriate procedures to
5 ensure the confidentiality of any market sensitive information
6 submitted in an electrical corporation's proposed procurement
7 plan or resulting from or related to its approved procurement plan,
8 including, but not limited to, proposed or executed power purchase
9 agreements, data request responses, or consultant reports, or any
10 combination, provided that the Office of Ratepayer Advocates and
11 other consumer groups that are nonmarket participants shall be
12 provided access to this information under confidentiality
13 procedures authorized by the commission.

14 (h) Nothing in this section alters, modifies, or amends the
15 commission's oversight of affiliate transactions under its rules and
16 decisions or the commission's existing authority to investigate and
17 penalize an electrical corporation's alleged fraudulent activities,
18 or to disallow costs incurred as a result of gross incompetence,
19 fraud, abuse, or similar grounds. Nothing in this section expands,
20 modifies, or limits the *State Energy Resources Conservation and*
21 *Development Commission's* existing authority and
22 responsibilities as set forth in Sections 25216, 25216.5, and 25323
23 of the Public Resources Code.

24 (i) An electrical corporation that serves less than 500,000
25 electric retail customers within the state may file with the
26 commission a request for exemption from this section, which the
27 commission shall grant upon a showing of good cause.

28 (j) (1) Prior to its approval pursuant to Section 851 of any
29 divestiture of generation assets owned by an electrical corporation
30 on or after the date of enactment of the act adding this section, the
31 commission shall determine the impact of the proposed divestiture
32 on the electrical corporation's procurement rates and shall approve
33 a divestiture only to the extent it finds, taking into account the
34 effect of the divestiture on procurement rates, that the divestiture
35 is in the public interest and will result in net ratepayer benefits.

36 (2) Any electrical corporation's procurement necessitated as a
37 result of the divestiture of generation assets on or after the effective
38 date of the act adding this subdivision shall be subject to the
39 mechanisms and procedures set forth in this section only if its



1 actual cost is less than the recent historical cost of the divested
2 generation assets.

3 (3) Notwithstanding paragraph (2), the commission may deem
4 proposed procurement eligible to use the procedures in this section
5 upon its approval of asset divestiture pursuant to Section 851.

6 SEC. 3. Nothing in this act is intended to imply that
7 procurement of electricity from third parties in a wholesale
8 transaction is the preferred method of fulfilling an electrical
9 corporation's obligation to serve its customers at just and
10 reasonable rates.

11 SEC. 4. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

20 SEC. 5. The sum of six hundred thousand dollars (\$600,000)
21 is hereby appropriated from the Public Utilities Commission
22 Utility Reimbursement Account in the General Fund to the Public
23 Utilities Commission for the purposes of implementing this act.

24 SEC. 6. This act is an urgency statute necessary for the
25 immediate preservation of the public peace, health, or safety
26 within the meaning of Article IV of the Constitution and shall go
27 into immediate effect. The facts constituting the necessity are:

28 In order that the Public Utilities Commission may undertake the
29 review and approval of each electric corporation's procurement
30 plan at the earliest possible time, in a manner consistent with this
31 act, it is necessary that this act take effect immediately.

